

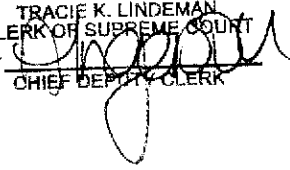
IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID A. FRANCIS,
Petitioner,
vs.
THE STATE BAR OF NEVADA,
Respondent.

No. 65164

FILED

APR 03 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or, alternatively, prohibition challenges the State Bar of Nevada's refusal to recognize the alleged expiration of petitioner David A. Francis's suspension from the practice of law.

After the State Bar filed a petition pursuant to SCR 111(4) informing this court that Francis had been convicted of violating NRS 240.150 (prohibited acts by a notary), this court temporarily suspended Francis from the practice of law and referred the matter to the Southern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings to determine the extent of discipline to be imposed. *In re Discipline of Francis*, Docket No. 60134 (Order of Temporary Suspension and Referral to the Southern Nevada Disciplinary Board, December 7, 2012). Thereafter, Francis and the State Bar agreed to consolidate the disciplinary proceeding ordered by this court with proceedings on other bar complaints pending against Francis. Despite the consolidation, the parties also agreed to bifurcated hearings, with the first addressing Francis's conviction for violating NRS 240.150 and a bar complaint arising from the same conduct, and the remaining matters to be considered 30 to 60 days later.

On February 13, 2013, a disciplinary panel held a hearing on the first phase of Francis's proceedings. The panel ultimately concluded that Francis violated RPC 1.1 (competence), RPC 1.3 (diligence), and RPC 1.4 (communication) and recommended that Francis be suspended for "90 days counting the two months you've already been suspended, [with] our intention being there's a lift on March 7th [2013]."

Despite the parties' intention that the remaining matters would be heard 30 to 60 days later, they have still not yet been resolved, and the panel's recommendation with respect to the first phase has not been forwarded to this court for review. *See* SCR 105(3)(b).


In the meantime, the parties have disagreed about the effect of the panel's recommendation of a 90-day suspension for the first phase. Francis's position is that he is no longer suspended because the panel stated that the suspension was intended to last only until March 7, 2013. According to Francis, the State Bar disagrees, stating that this court has discretion whether to approve the panel's recommendation and that Francis remains temporarily suspended until this court enters an order otherwise. Francis has now filed the instant petition, asking this court to order the State Bar to "recognize" that Francis is not currently suspended.


Francis is correct that a suspension of less than six months does not require a reinstatement proceeding, but he ignores the provision of SCR 105(3)(b) that a hearing panel "decision recommending a . . . suspension . . . shall be automatically reviewed by the supreme court." Such review is "commenced by bar counsel forwarding the record of the . . . proceedings to the court," which has not yet happened here because the second phase of the bar complaints against Francis are still pending. Thus, the 90-day suspension recommended by the panel has not

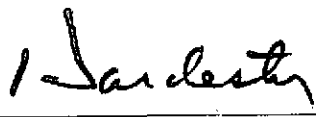
taken effect, despite the panel's intention. As this court has not yet reviewed, much less approved, the panel's recommendation, Francis remains temporarily suspended. Because Francis is incorrect that his suspension has expired, he is not entitled to the relief he seeks.

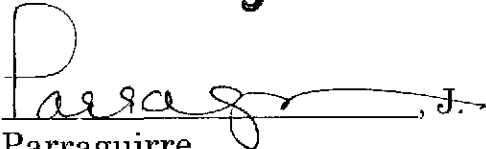
Accordingly, we conclude that our intervention is not warranted, *see* NRAP 21(b) (this court may summarily dismiss a petition for an extraordinary writ without ordering the respondent to file an answer to the petition), and we


ORDER the petition DENIED.

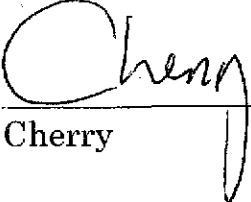

_____, C.J.
Gibbons

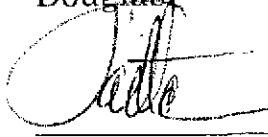

_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Pitaro & Fumo, Chtd.
State Bar of Nevada/Las Vegas